



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,553	06/30/2003	Christopher Sellars	SELLARS-3 CIP	5013

25889 7590 12/14/2004

WILLIAM COLLARD
COLLARD & ROE, P.C.
1077 NORTHERN BOULEVARD
ROSLYN, NY 11576

EXAMINER

HOESLY, RYAN C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,553	Applicant(s) SELLARS, CHRISTOPHER	
	Examiner Ryan C. Hoesly	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 12-23 have been renumbered 11-22. There is no claim 11, so numbers have been adjusted accordingly.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1- 9 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Badillo et al (US Patent Number 6729518). Badillo teaches a carrying case with selectively adjustable stand that includes a sheath or pouch (34), a flap (40) coupled to the pouch, and a fastener (60) for coupling the flap closed to the pouch to form a loop.

Art Unit: 3727

Badillo discloses that both the pouch and the flap are made from a flexible material (column 6, line 36) whereas the flap has a body section and a fastener (60) at the other end that couples to a fastener opposite of the pouch to form a loop. Badillo also discloses that the carrying case may also have a back support member (32) made of a stiff material and coupled to the back section of the pouch to provide a stiff backing. Badillo discloses that the entire case may be covered with material by stitching it over the rigid elements; therefore, the backing element is substantially enclosed in the body section (30) of the holder. Badillo further discloses storage sleeves (46) coupled to a front side of the body section that is arranged longitudinally to receive small and vertical elements. Badillo also discloses a cover flap (48) coupled to the body and removably attached to the front of the pouch via fastener (58) whereas the flap will cover over any object inserted into the pouch.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badillo as applied to claims 1-9 and 16 above. Badillo discloses that the carrying case may or may not be provided with a back support (32), however, it is not disclosed whether the back support is removable. Because the carrying case can be used with or without the

Art Unit: 3727

back support, it would have been obvious to one skilled in the art at the time of invention to make the container that houses the back support accessible so that the back support could be removed if desired.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badillo, as applied to claims 1-9, 11 and 16, in view of Clay (US Patent Number 3637120). Clay teaches a solder iron holster that includes an article carrier (19) adjacent to an attaching flap (12) where the attaching flap body includes a longitudinally extending fastener (column 2, line 9). The longitudinally extending fastener includes two flaps that are secured by a fastening element. It would have been obvious to one skilled in the art at the time of invention to modify the longitudinally extending fastener of the Badillo device to be able to open as two flaps and secured by a fastener to make a tube as in the technology of Clay.

6. Claims 12-15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badillo as applied to claims 1-9, 11, and 16 above, and further in view of Schaiewitz (US Patent Number 5893497). Schaiewitz teaches a universal pager caddy that includes a receptacle (20) for carrying articles that has a backing element (22) attached to the rear of the receptacle (24). Schaiewitz discloses two attachment methods: a molded plastic clip (21) that is oriented over the backing element and a safety pin (14) attached at both ends (12 and 13) of the backing element. Because the Schaiewitz device uses a plastic molded clip instead of a fabric loop that Badillo utilizes, it is unnecessary for the clip to have a hole for the safety pin to pass through. The clip and the backing element are molded so that either the safety pin or the clip may be

utilized without interfering with the other. Safety pin connection (12) has a safety device that selectively restricts the operation of the pin so that the safety pin may be restrained when not in use. The safety device must still be manipulated to release the pin out of a hole, but the hole is not through the clipping means. The Badillo and the Schaiewitz devices are both capable of carrying mobile communication devices or other appropriately sized items and have means for attaching the receptacles to belts, pockets, or other areas where a loop or clip may be used. The Badillo device, however, could not be attached inside a pocket without part of the device remaining on the outside in order to clip on. Because both devices perform similar functions in similar ways, it would have been obvious to one skilled in the art at the time of invention to modify the Badillo device as in the technology of Schaiewitz, so that the carrying case would have an attaching means that does not require a surface to loop around or clip to.

7. Claims 17-19, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badillo as applied to claims 1-9 and 16 above, and further in view of Beletsky et al (US Patent Number 6547118). Beletsky teaches a tactical rig for law enforcement and military use, including holster that includes a receptacle (11) coupled to a body section (10) that has a releasable strap (21) connected via hook and loop material (56) and having a fastener (23) at the opposite end so that the device may be attached to a user. The fastening section of the Beletsky device works independently of the body section because the device hangs around the thighs, however the hook material and the strap are long enough that if it were desired to use a fastening loop instead of a device, the fastening device could be substituted with loop material so that

Art Unit: 3727

the fastening section would loop down past where the strap is attached and attach via the hook and loop material. If one wanted the strap of the Badillo device to be removable, it would have been obvious to one skilled in the art at the time of invention to modify the Badillo device as in the technology of Beletsky so that the fastening section of the flap would be attached to a removable strap.

8. With regards to claim 21, section d, Badillo discloses that a strap (126) may be used to secure articles within the receptacle as opposed to a flap cover.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record is located in the Notice of References Cited (PTO Form-892).

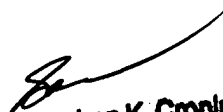
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Hoesly whose telephone number is (703) 305-0576. The examiner can normally be reached on Monday-Thursday 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rch



Stephen K. Cronin
Primary Examiner